



4510-29-P

**DEPARTMENT OF LABOR**

Employee Benefits Security Administration

[Prohibited Transaction Exemption **2012-10**;

Exemption Application No. **D-11655**]

Grant of Individual Exemption Involving **Renaissance Technologies, LLC** (Renaissance, or the Applicant)

Located in New York, New York

**AGENCY:** Employee Benefits Security Administration, U.S. Department of Labor.

**ACTION:** Grant of individual exemption.

**SUMMARY:** This document contains an individual exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act) and the Internal Revenue Code of 1986, as amended (the Code). The transactions involve Renaissance and certain of Renaissance's privately offered collective investment vehicles managed by Renaissance, comprised almost exclusively of proprietary funds. The individual exemption affects the individual retirement accounts beneficially owned by Renaissance's employees,

certain of Renaissance's owners, and the spouses of such employees and owners.

EFFECTIVE DATE: The individual exemption is effective as of January 1, 2012.

FOR FURTHER INFORMATION CONTACT: Warren Blinder of the Department, telephone (202) 693-8553. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On January 20, 2012, the Department of Labor (the Department) published a notice of proposed individual exemption in the Federal Register at 77 FR 3038 from the restrictions of section 406(a)(1)(A) and (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) and (D) of the Code.<sup>1</sup> The proposed exemption was requested by Renaissance pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR

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<sup>1</sup> For purposes of this exemption, references to the provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

Part 2570, Subpart B (76 FR 66637, October 27, 2011). Effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978, (5 USC App. 1 (1996)) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this final individual exemption is being issued solely by the Department.

#### WRITTEN COMMENTS

The Department invited all interested persons to submit written comments with respect to the proposed exemption on or before February 24, 2012. During the comment period, the Department received no comments or inquiries from Participants. However, the Department received a written comment from the Applicant, which supported the exemption and requested certain modifications and/or clarifications to the General Conditions and the Definitions sections of the proposed exemption and to the Summary of Facts and Representations (the Summary) of the proposed exemption.

Following is a discussion of the Applicant's comments, including the responses made by the Department to address the issues raised therein. Any capitalized terms herein

not otherwise defined have the meanings ascribed to them in the Summary.

A. Clarifications Concerning Certain Conditions of Relief

The Applicant requested modifications and/or corrections to certain General Conditions of the proposed exemption relating to: (1) the descriptions of the investor restrictions for individuals investing in the New Medallion Funds; (2) New Kaleidoscope's redemption policy; (3) the description of the valuation policy for the Funds' investment holdings; (4) the operation of a Participant's Investment Allocation; (5) the disclosures required to be given by Renaissance to Participants in connection with their investment in the New Medallion Vehicles; and (6) the legal, jurisdictional, venue, and service requirements attributable to Renaissance in connection with a Participant's investment in the New Medallion Vehicles.

1. Descriptions of Investor Restrictions. Section III(c) of the proposed exemption provides that "[a]n interest in a New Medallion Vehicle is only available to IRA Holders who satisfy the securities law-based investor qualifications applicable to all investors in such New Medallion Vehicle." However, in its comment, the Applicant

suggested a modification of Section III(c) to clarify that some relevant investor restrictions come from other sources, such as the Commodity Futures Trading Act, in order to be more precise. Therefore, the Applicant suggests that the phrase "and other regulatory" should be inserted after "securities law." In addition, the Applicant suggests a corresponding change to the last sentence of Representation 61 of the Summary, in order to reflect the foregoing modification made to Section III(c) of the proposed exemption.

The Department has revised Section III(c) of the final exemption to reflect the Applicant's suggested revision, to read as follows: "An interest in a New Medallion Vehicle is only available to IRA Holders who satisfy the securities law and other regulatory-based investor qualifications applicable to all investors in such New Medallion Vehicle." Furthermore, the Department takes note of the Applicant's suggested corresponding change to Representation 61 of the Summary.

2. Redemption Policy for New Kaleidoscope. Section III(f) of the proposed exemption provides that, "[a]n IRA's interest in a New Medallion Vehicle is redeemable, in whole or in part, without the payment of any redemption fee or

penalty, no less frequently than on a quarterly basis upon no less than 10 days advance written notice." However, the Applicant notes that such condition, as written, does not reflect the actual operation of New Kaleidoscope, which requires 45 days' notice. Therefore, the Applicant's comment requested that the following phrase be appended to the end of the sentence: "except in the case of New Kaleidoscope, where 45 days' notice is required." In addition, the Applicant's comment suggested a corresponding change to Representation 76(f) in order to conform the Summary to the foregoing modification made to Section III(f) of the proposed exemption.

The Department has modified Section III(f) of the final exemption to reflect the Applicant's suggested revision, to read as follows: "An IRA's interest in a New Medallion Vehicle is redeemable, in whole or in part, without the payment of any redemption fee or penalty, no less frequently than on a quarterly basis upon no less than 10 days advance written notice, except in the case of New Kaleidoscope, for which 45 days' notice is required." Furthermore, the Department takes note of the Applicant's suggested corresponding modification to Representation 76(f) of the Summary.

3. Funds' Valuation Policy. Section III(g) of the proposed exemption provides that "[a]n acquisition or redemption of an IRA's interest in a New Medallion Vehicle is made for fair market value," and Subparagraphs (1) through (4) of Section III(g) further describe how fair market value is to be determined for each of equity securities, fixed-income securities, options, and investments for which current market quotations are not readily available, respectively. In its comment, the Applicant requested modifications to Section III(g) relating to the determination of "fair market value" for equity securities and fixed-income securities.

The Applicant states that, with respect to equity securities, there was a change to the Applicant's valuation policy that occurred in June 2011 that corrected a flaw for the valuation of illiquid equity securities. According to the Applicant, although Renaissance seldom holds illiquid equity securities for the Medallion Funds, immediately prior to making this change, a few securities became illiquid, and did not generate any bids or offers on days when valuations were needed; so that the methodology

described in Section III(g) of the proposed exemption was difficult to apply.<sup>2</sup>

The Applicant states that the valuation policy described in Section III(g) of the proposed exemption contemplates the potential need to value an illiquid security, and provides for the use of the last bid or ask price for the security on the day of the valuation. However, the Applicant notes that the standard is flawed in that it does not work if there is no bid or ask on the valuation date. The Applicant represents that, after Renaissance encountered this flaw in 2011, it adopted a policy of using the last price at which the security traded, discounted depending on the time between the trade date and the valuation date.<sup>3</sup>

Accordingly, the Applicant's comment suggested that Section III(g)(1) pertaining to equity securities, should be modified as follows in order to describe Renaissance's current valuation policy more accurately:

Equity securities are valued at their last reported sale price or official closing price on

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<sup>2</sup> The Applicant notes that a security may become illiquid, for example, if trading in it is suspended.

<sup>3</sup> The Applicant states that Renaissance solicited the opinion of two major independent audit firms, which advised that this was an appropriate solution to the issue.



the market on which such securities primarily trade using sources independent of Renaissance and the issuer. If no sale of such equity security was reported on that date, the market value will be the last reported sale price on the most recent date for which a price is available, and will reflect a discount if such date occurred more than 30 days before.

According to the Applicant, since Renaissance generally does not invest in illiquid securities, the modification of the valuation policy for illiquid equity securities is, as a practical matter, a *de minimis* change with an immaterial effect on the operation of Medallion and the valuation of any of its investments.<sup>4</sup> The Applicant notes that the change to the valuation policy simply solves a minor problem that had come to light through actual experience. Furthermore, the Applicant maintains that the change is wholly to the benefit of investors, since it provides a methodology which can always be applied to illiquid equity securities. Since bid and ask prices are generally not available for these securities, they could not have been valued at all but for this change in policy.

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<sup>4</sup> The Applicant represents that, on a monthly basis, from the implementation of the above policy in June 2011 through the end of 2011, illiquid securities in the Medallion Funds, at the most, represented less than 8/100ths of one percent of the number of positions (December) and slightly over 5/100ths of one percent of the value of the portfolio (June).

The Applicant represents that the language describing the valuation of fixed income securities in Section III(g)(2) of the proposed exemption is a more general description of the valuation policy, and its comment suggested changes that are intended to clarify certain aspects concerning the determination of the prices of such securities. The Applicant notes that this suggested modification does not reflect a change in the substance of this policy.

The Applicant explains that Renaissance's valuation policy that is applicable to fixed income securities has been in effect since August 2008. According to the Applicant, this policy provides more specificity concerning the determination of "bid" prices in various circumstances than that which the proposed exemption describes. In this regard, the Applicant notes that the valuation policy prioritizes the use of independent pricing services, where possible, as distinguished from the use of independent providers. The Applicant maintains that its suggested modification is intended to illuminate this prioritization. Accordingly, in order to clarify the prioritization of the sources of bid prices and avoid creating the impression that there is no prioritization between the use of independent pricing services and

providers, the Applicant suggests a clarifying modification to Section III(g)(2), as follows:

Fixed income securities are valued at the "bid" price of such securities at the close of business on the relevant valuation date. These prices are determined (i) where available, on the basis of prices provided by independent pricing services that determine valuations based on market transactions for comparable securities; and (ii) if independent pricing services are not available, on the basis of quotes obtained from multiple independent providers that are either U.S.-registered or foreign broker-dealers, which are registered and subject to the laws of their respective jurisdiction, or banks.

The Applicant states that this suggested modification is a clarification of methodology but not a change from the valuation policy as described in the proposed exemption, i.e., fixed income securities are valued on the basis of their bid prices where possible.<sup>5</sup> The Applicant explains that the use of "bids" in pricing fixed income instruments is the relevant point being made in its description of how fixed income securities are valued and that the methodology by which those bids are determined is secondary. Further, the Applicant asserts that these changes would make the description of the valuation policy clearer.

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<sup>5</sup> The Applicant notes that, in the context of fixed income securities, a "firm quote" or the "price" of a security given by a dealer or pricing service is equivalent to the "bid price" of such security.

In addition, the Applicant's comment suggested an additional, corresponding change to Representation 67 in the Summary, in order to conform the Summary to the foregoing modifications made to Section III(g) of the proposed exemption.

The Department has modified the final exemption to reflect the Applicant's suggested revisions to Section III(g)(1) and (2), to read as described above. Furthermore, the Department takes note of the Applicant's suggested corresponding changes to Representation 67 of the Summary.

4. Participant's Investment Allocation. Section III(i) of the proposed exemption provides that "[i]n the event that a redemption of any portion of an IRA Holder's interest in any of the Medallion Funds becomes necessary as the result of a reduction of the Investment Allocation applicable to an IRA Holder, then, at such IRA Holder's election, a redemption is first made of the IRA Holder's taxable investments (if any) prior to his or her IRA's interest in a New Medallion Vehicle." The Applicant's comment requested a change to Section III(i) in order to clarify that only Participants (i.e., employees and certain former employees who remain owners of Renaissance) have

Investment Allocations, which can be shared with their spouses. In this regard, the Applicant's comment suggested that Section III(i) should read as follows:

In the event that a redemption of any portion of an interest in a New Medallion Vehicle held by an IRA becomes necessary as the result of a reduction of the Investment Allocation applicable to a Participant, then, at an IRA Holder's election, a redemption may first be made of the IRA Holder's taxable investments (if any) prior to his or her IRA's interest in a New Medallion Vehicle.

The Department has modified the final exemption to reflect the Applicant's suggested revision, to read as described above.

5. Participant Disclosures. Section III(1) of the proposed exemption provides that, in advance of the initial investment by an IRA in a New Medallion Vehicle, IRA Holders will generally receive (1) a copy of the proposed exemption and the final exemption, (2) a private offering memorandum (and the same disclosures and information provided to other investors in such Funds), and (3) all reasonably available relevant information as such IRA Holder may request. In its comment, the Applicant explained that it is concerned about the operation of subparagraph (3) of Section III(1), as it could be read to require Renaissance to solicit requests for additional

information from IRA Holders, and to distribute such information with the materials described in subparagraphs (1) and (2) of Section III(1). Therefore, the Applicant's comment requested that subparagraph (3) of Section III(1) should be revised to read as follows:

Following receipt of the information in (1) and (2), an IRA Holder will receive all reasonably available relevant information as such IRA Holder may request.

The Department has modified the final exemption to reflect the Applicant's suggested revision to Section III(1)(3) of the proposed exemption, to read as described above.

6. Legal and Other Requirements. Section III(n) of the proposed exemption provides that Renaissance, the New Medallion Vehicles, and each Fund or vehicle in which, or through which, a New Medallion Vehicle invests, will agree to certain legal, jurisdictional, service of process, and venue requirements. The Applicant's comment suggested that the language of Section III(n) of the proposed exemption should be modified in order to reflect requested modifications to the definitions of the New Medallion Vehicles in Sections IV(j) through (m) of the proposed exemption.

Furthermore, the Applicant notes that the definition of "Funds" in Section IV(d) includes the existing collective investment vehicles managed by Renaissance, but not the New Medallion Vehicles or New RIEF/RIFF. The Applicant explains that two of the New Medallion Vehicles, New Medallion FF and New Medallion FF RMPRF, will invest in the Medallion Master Funds, and the other, New Kaleidoscope, will invest in New Medallion FF RMPRF, and New RIEF/RIFF. Accordingly, the Applicant suggests that the consent described in Section III(n) of the proposed exemption should be given by those Funds managed by Renaissance in which IRAs may invest, directly or indirectly, under the proposed exemption. Thus, to avoid obtaining consents from collective investment vehicles managed by Renaissance that are not involved in the covered transactions, the Applicant suggests that the introductory language of Section III(n) should be revised to read as follows:

Prior to the acquisition by an IRA of an interest in a New Medallion Vehicle or each Medallion Master Fund, another New Medallion Vehicle, or New RIEF/RIFF in which, or through which, a New Medallion Vehicle invests, Renaissance or the applicable New Medallion Vehicle manager (the New Medallion Vehicle Manager), with respect to any such acquisition by an IRA....

In addition, the Applicant's comment suggested additional, corresponding changes to the last sentence of Representation 75 and Representation 76(m) of the Summary, in order to conform the Summary to the foregoing modification made to Section III(n) of the proposed exemption.

The Department has revised the final exemption to reflect the Applicant's suggested revisions to Section III(n) of the proposed exemption. The Department also notes the suggested corresponding change to Representation 75 of the Summary.

B. Clarifications Relating to Certain Definitions in the Proposed Exemption

The Applicant's requested clarifications and/or corrections to the Definitions section of the proposed exemption related to: (1) an update in the number of Funds managed by Renaissance; (2) the description of the Participants' Investment Allocation; (3) an update to the definition of "Kaleidoscope Fund" to conform to its offering documents; (4) an update to the definitions of the "New Medallion Vehicles" to conform to their offering documents and the addition of a defined term for another new Medallion investment vehicle; (5) the inclusion of any



current employee of Renaissance in the definition of "Participant;" (6) the inclusion of an additional individual in the definition of "Permitted Owners;" and (7) the composition of the Renaissance Valuation Committee.

1. Funds' Update. Section IV(d) of the proposed exemption provides that the term "Fund" or "Funds" means, "...the nine privately offered U.S. and non-U.S. collective investment vehicles managed by Renaissance...and the five privately offered U.S. and non-U.S. collective investment vehicles...." The Applicant's comment stated that Renaissance currently manages six, not five, non-Proprietary Funds, and further requested that the definition of "Fund" or "Funds" should be modified to reflect such change.

The Department notes the Applicant's suggested revision to Section IV(d) of the proposed exemption and has modified the final exemption to read as follows:

The term "Fund" or "Funds" means, individually or collectively, the nine privately offered U.S. and non-U.S. collective investment vehicles managed by Renaissance, comprised almost exclusively of assets of Renaissance and its owners and employees (the Proprietary Funds) and the six privately offered U.S. and non-U.S. collective investment vehicles, consisting primarily of assets of clients of Renaissance (the non-Proprietary Funds).

Furthermore, the Department notes a corresponding change to Representation 3 of the Summary, wherein the Applicant represented that Renaissance is the investment manager of fourteen privately offered U.S. and non-U.S. collective investment vehicles, comprised of 9 Proprietary Funds and 5 non-Proprietary Funds.

2. Participant's Investment Allocation Description.

Section IV(e) of the proposed exemption provides that the term "Investment Allocation" means "the permitted investment allocation in the Medallion Funds applicable to a Renaissance employee, which such employee and his or her Spouse may utilize to make investments in a Medallion FF or Kaleidoscope, or in an applicable New Medallion Vehicle investing in such Funds, subject to each such employee's overall Investment Allocation limit." The Applicant's comment stated that the definition of Investment Allocation is not clear, and suggested that the definition of "Investment Allocation" should be revised to read as follows:

The term "Investment Allocation" means the permitted investment allocation limit in the Medallion Funds applicable to a Renaissance employee, which such employee and his or her Spouse may utilize to make investments in a Medallion FF or Kaleidoscope, or in an applicable New Medallion Vehicle.

In addition, the Applicant's comment suggested a corresponding change to Representations 63 and 64 of the Summary in order to conform the Summary to the foregoing modification made to Section IV(e) of the proposed exemption.

The Department has modified the final exemption as described above, to reflect the Applicant's suggested revisions to Section IV(e) of the proposed exemption. In addition, the Department notes the suggested corresponding change to Representation 64 of the Summary.

3. Kaleidoscope Fund Update. Section IV(h) of the proposed exemption provides that the term "Kaleidoscope" means "Kaleidoscope Fund LLC, a Delaware limited liability company established by Renaissance to facilitate the investment by certain employees of Renaissance in the other Proprietary Funds." The Applicant's comment suggested that the definition of "Kaleidoscope" in Section IV(h) should be revised as follows, to describe more accurately the name of the Fund and the eligible employees for whom such Fund is established:

The term "Kaleidoscope" means Renaissance Kaleidoscope Fund LLC, a Delaware limited liability company established by Renaissance to facilitate the investment by employees of

Renaissance who are not Accredited Investors under the Securities Act of 1933, as amended (the 1933 Act) or otherwise do not meet the financial requirements in the other Proprietary Funds.

In addition, the Applicant suggests a corresponding change to Representation 14 in the Summary in order to conform the Summary to the foregoing modification made to Section IV(h) of the proposed exemption.

The Department has modified the final exemption as described above to reflect the Applicant's suggested revisions to Section IV(h) of the proposed exemption. In addition, the Department notes the suggested corresponding change to Representation 14 of the Summary.

4. New Medallion Vehicles Update. Sections IV(j), (k), and (m) of the proposed exemption provide definitions of the terms "New Medallion Vehicle," "New Kaleidoscope," and "New Medallion FF." The Applicant's comment suggests modifications to these definitions, in order to conform the definitions of the New Medallion Vehicles more closely to their respective offering documents, and to more fully describe their characteristics, including the eligible employees for whom such Funds are established.

Moreover, the Applicant explains that the New Medallion Conduit (New Medallion FF RMPRF), defined in

Section IV(1) of the proposed exemption, is designed to permit IRA Holders who do not meet the eligibility requirements of New Medallion FF to invest in the Medallion Master Funds, and thus will accept investment by IRA Holders in addition to investment by New Kaleidoscope. The Applicant explains that New Medallion FF RMPRF is organized under section 3(c)(1) of the 1940 Act and has a 100 investor limit thereunder, and New Kaleidoscope will itself be an Accredited Investor for purposes of investing in New Medallion FF RMPRF. Therefore, the Applicant suggests that the definition of "New Medallion Conduit" in Section IV(1) of the proposed exemption be stricken and replaced with the definition of "New Medallion FF RMPRF," which more accurately describes such Fund.

Accordingly, the Applicant suggests that Sections IV(j), (k), (l), and (m) of should be revised, respectively, to read as follows:

The term "New Medallion Vehicle" or "New Medallion Vehicles" means, individually or collectively, New Medallion FF, New Medallion FF RMPRF, and New Kaleidoscope.

The term "New Kaleidoscope" means Renaissance Kaleidoscope RF Fund LLC, the Delaware limited liability company established by Renaissance in order to facilitate an investment by IRA Holders who are not "Accredited Investors" under the 1933 Act in New Medallion FF RMPRF and New RIEF/RIFF, through their IRAs.

The term "New Medallion FF" means Medallion Fund RF LP, the Bermuda Limited Partnership that is treated as a corporation for US Federal Income Tax purposes, established by Renaissance in order to facilitate an investment by an IRA Holder who is a "Qualified Purchaser" or "Knowledgeable Employee" under the Investment Company Act of 1940, as amended (the 1940 Act) in the Medallion Master Funds, through his or her IRA.

The term "New Medallion FF RMPRF" means Medallion RMPRF Fund LP, the Bermuda Limited Partnership that is treated as a corporation for US Federal Income Tax purposes established by Renaissance in order to facilitate the investment by IRA Holders who are neither Qualified Purchasers nor "Knowledgeable Employees" as defined in the 1940 Act, but who are Accredited Investors, in the Medallion Master Funds, through their IRAs.

In addition, in order to more fully describe New Kaleidoscope, and to provide additional context for its investments, the Applicant in its comment letter suggests the addition of a definition for "New RIEF/RIFF." Accordingly, the Applicant suggests that new Section IV(n) be added to the proposed exemption as follows:

The term "New RIEF/RIFF" means a newly organized series of RIEF RMP LLC and a newly created Bermuda limited partnership to be known as RIFF RF Fund LP, respectively, each of which has been established to facilitate investments of IRAs in RIEF RMP LLC and RIFF RMP LLC.

Finally, the Applicant suggests that Sections IV(n) - (q) of the proposed exemption should be re-designated in the final exemption as Sections IV(o) - (r), to accommodate the addition of the definition of "New RIEF/RIFF."

The Department has modified Sections IV(j), (k), (l), and (m), and added new Section IV(n) in the final exemption, as described above, to reflect the Applicant's suggested revisions. Furthermore, Sections IV(n) - (q) of the proposed exemption have been re-designated in the final exemption as Sections IV(o) - (r).

5. Participant Update. Section IV(n) of the proposed exemption defines the term "Participant," as "a former participant in the Renaissance Technologies, LLC 401(k) Plan (the 401(k) Plan) who received a distribution of their entire account balance in the 401(k) Plan prior to December 31, 2010 as a result of the termination of such plan, and is either an employee or a Permitted Owner of Renaissance at the time of such individual's investment in the New Medallion Vehicles." However, the Applicant's comment requested that the definition of "Participant" be expanded to cover all employees of Renaissance, not just those who received Proceeds prior to December 31, 2010.

The Applicant explains that, since the termination of the 401(k) Plan, several new employees who were not participants in that plan have joined (and left) Renaissance, through the normal process of employee turnover. As a result, according to the Applicant, the

definition of "Participant" provided in the proposed exemption would cause Renaissance to have "two classes" of employees - those who have the opportunity to make IRA investments in New Vehicles and those who do not, a result that the Applicant desires to avoid. The Applicant represents that it does not foresee any substantive changes in the size or educational characteristics of its employee group, as a result of the normal employee turnover process.

Accordingly, the Applicant requested that the definition of Participant be revised to read as follows:

The term "Participant" means a person who is either an employee or a Permitted Owner of Renaissance at the time of such individual's investment in the New Medallion Vehicles.

The Department has modified the final exemption as described above in order to reflect the Applicant's suggested revisions to Section IV(n) of the proposed exemption and has re-lettered Section IV(n) as Section IV(o).

6. Permitted Owners Update. Section IV(o) of the proposed exemption defines the term "Permitted Owner" to mean "the seven individuals permitted to invest in the Medallion Funds following the termination of their Renaissance employment, comprised of three Renaissance



"founders," and four former employees who are owners of Renaissance." The Applicant's comment explained that, although Renaissance had previously indicated that there are seven persons constituting "Permitted Owners," in reality there are eight such individuals. Therefore, the Applicant's comment suggested that the definition of "Permitted Owner" be revised to read as follows:

The term "Permitted Owners" means the eight individuals permitted to invest in the Medallion Funds following the termination of their Renaissance employment, comprised of three Renaissance "founders" each of whom is a current owner of Renaissance and one of whom is a current employee, and five former employees who are current owners of Renaissance.

In addition, the Applicant suggests an additional, corresponding change to Footnote 41 in the Summary, in order to conform the Summary to the foregoing modification made to Section IV(o) of the proposed exemption.

The Department has modified the final exemption as described above to reflect the Applicant's suggested revisions to Section IV(o) of the proposed exemption and has re-lettered Section IV(o) as Section IV(p). In addition, the Department notes the Applicant's suggested corresponding revision to Footnote 41 in the Summary.

7. Renaissance Valuation Committee Update. Section IV(p) of the proposed exemption provides that the term "Renaissance Valuation Committee," or "RVC" means "the committee, established by Renaissance in 2008, that oversees and monitors the valuation process, and establishes the methods of, and procedures for, valuing various instruments traded by Renaissance (e.g., the Proprietary Funds), composed of high-level Renaissance employees who also are Fund investors." The Applicant's comment suggested certain modifications to Section IV(p) in order to more accurately describe the RVC.

In this regard, the Applicant requests that the parenthetical "(e.g., the Proprietary Funds)" be deleted, because, as the Applicant explains, a Proprietary Fund is not an instrument that is traded by Renaissance. Furthermore, the Applicant suggests that the word "are" before "Fund investors" at the end of the definition should be changed to "may be," because, as the Applicant explains, classification as a Fund investor is not a requirement for membership in the RVC. Thus, Section IV(p) would read as follows:

The term "Renaissance Valuation Committee," or "RVC," means the committee, established by Renaissance in 2008, that oversees and monitors the valuation process, and establishes the methods of, and procedures for, valuing various

instruments traded by Renaissance, composed of high-level Renaissance employees who also may be Fund investors.

The Department has modified Section IV(p) of the proposed exemption to read as described above, to reflect the Applicant's suggested revision. Furthermore, Section IV(p) has been re-designated as Section IV(q) in the final exemption.

C. Clarifications and/or Corrections of Representations Made in the Summary

The Applicant's requested modifications to the Summary generally relate to: (1) the description of Renaissance and the Funds; (2) the description of the Medallion Funds master/feeder structure; (3) Renaissance's ownership and investment structure; (4) the timing of the termination of the 401(k) Plan; (5) the avoidance of a performance guarantee implication; (6) the suggested modifications to Sections III and IV of the proposed exemption, relating to the descriptions of the New Medallion Vehicles and investors' qualifications required to invest therein; and (7) the lack of investment advice or employment-related incentives concerning an IRA Holder's investment in the New Medallion Vehicles.

1. Description of Renaissance and the Funds. The Applicant notes that the paragraph captioned "SUMMARY" that is found on page 3038 of the proposed exemption contains an erroneous description of the Applicant. In this regard, the Applicant explains that it is incorrectly referred to as "Renaissance Technologies, Inc." rather than as "Renaissance Technologies LLC." The Department notes this correction to the SUMMARY.

2. Medallion Funds Structure. Representation 17 of the Summary explains that, "Renaissance is the general partner of the Medallion FFs and Medallion Master Funds that are organized as limited partnerships, and certain of Renaissance's owners serve as directors of the Medallion FFs and Medallion Master Funds that are organized as non-U.S. corporations." The Applicant notes in its comment letter that some of the Medallion FFs and Medallion Master Funds are organized as limited liability companies. Accordingly, the Applicant suggests that the first sentence of Representation 17 of the Summary should read as follows:

Renaissance is the general partner or managing member of the Medallion FFs and Medallion Master Funds that are organized as limited partnerships or limited liability companies, respectively, and certain of Renaissance's owners serve as directors of the Medallion FFs and Medallion

Master Funds that are organized as non-U.S. corporations.

The Department takes note of the Applicant's requested clarification of Representation 17.

3. Renaissance's Ownership and Investment Structure.

In Representation 19 of the Summary, Footnote 9 states that "Renaissance directly owns 28.41% of the combined Medallion FFs, but Kaleidoscope, which invests directly in the Medallion FFs, is owned approximately 94.6% by Renaissance and 5.4% by its owners, directors, and employees." The Applicant notes that Kaleidoscope invests directly in only one of the Medallion FFs, and suggests that, for the sake of accuracy, Footnote 9 of the Summary be modified, accordingly. The Department takes note of the Applicant's requested clarification of Footnote 9.

4. Timing of 401(k) Plan Termination. In

Representation 30 of the Summary, describing the Applicant's termination of the 401(k) Plan, the Applicant notes that Renaissance terminated the 401(k) Plan in October 2010, so that Participants could receive distributions of their Proceeds prior to the end of that year. However, in its comment letter, the Applicant notes

that the 401(k) Plan was actually terminated in December 2010, not October 2010. The Department takes note of the Applicant's requested clarification.

5. Performance Guarantee Implication. In Representation 26 of the Summary, Footnote 13 reads, "[a]s the New Medallion Vehicles will not charge fees or profit participations in the form of performance allocations, Renaissance anticipates that their returns to IRA investors will exceed the historical net returns of the existing Proprietary Funds." The Applicant, in its comment letter, suggests that, in order to avoid any implication of a performance guarantee, Footnote 13 should be modified to read as follows:

As the New Medallion Vehicles will not charge management fees or profit participations in the form of performance allocations, Renaissance expects the returns to IRA investors in the New Medallion Vehicles will exceed the returns of the parallel Proprietary Funds for the same periods in which they invest and trade on a going forward basis.

The Department takes note of the Applicant's requested modification of Footnote 13.

6. New Medallion Vehicles' Descriptions/Investors' Qualifications. Representations 33 through 41 of the

Summary describe in detail the New Medallion Vehicles and the IRA Holders' qualifications required to invest in such Funds. The Applicant, in its comment letter, suggests that such Representations and their accompanying footnotes should be modified to reflect the corresponding revisions to the definitions of the New Medallion Vehicles, as well as the existence of an additional Permitted Owner, as were requested in the comment letter. Furthermore, the Applicant suggests modifications to the descriptions of the New Medallion Vehicles and New RIEF/RIFF where they are discussed in Footnotes 26 and 30, in Representations 58 and 59, and in Representations 63 through 65, corresponding to the requested revisions of such terms' definitions in Section IV of the proposed exemption. The Department takes note of the Applicant's requested clarifications of Representations 33 through 41, 58, 59, and 63 through 65, and of Footnotes 26 and 30.

7. Lack of Investment Advice/Employment-Related Incentives/Funds References. In Representation 54 of the Summary, the Applicant represents that "it has not provided, nor will it at any time provide, investment advice concerning an IRA Holder's investment of their IRA in the New Medallion Vehicles or offer any financial or

employment-related incentives to invest in the Funds."

Furthermore, the Applicant notes that "there have been no official communications with Participants regarding the opportunity to invest in the Funds through IRAs since the termination of the 401(k) Plan...."

In its comment letter, the Applicant also states that it would be appropriate for the Department to clarify that the two references to "Funds" in the Representation above should more appropriately refer to the "New Medallion Vehicles." The Applicant explains that, in Section IV(d) of the proposed exemption, "Funds" is defined to include a total of fifteen existing collective investment vehicles managed by Renaissance, comprised of both Proprietary and non-Proprietary funds. Furthermore, in Section IV(i) of the proposed exemption, the term "Medallion Funds" is defined to include a subset of the Funds, specifically, the Medallion FFs and Medallion Master Funds. The Applicant notes that the proposed exemption only addresses investments by IRA Holders in Medallion Funds, as that is where the prohibited transaction occurs. Therefore, according to the Applicant, it is appropriate to limit the statement in Representation 54 to the New Medallion Vehicles, so that it is consistent with the scope of the



relief granted. The Department takes note of the Applicant's requested clarifications of Representation 54.

After giving full consideration to the entire record, including the Applicant's written comment, the Department has decided to grant the exemption, subject to the terms and conditions, as described above. For further information regarding the individual exemption, interested persons are encouraged to obtain copies of the exemption application file (Application No. D-11655) that the Department maintains with respect to the individual exemption. The complete application file, as well as supplemental submissions received by the Department, is made available for public inspection in the Public Documents room of the Employee Benefits Security Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Ave., N.W., Washington, D.C. 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the proposed exemption published in the Federal Register on January 20, 2012 at 77 FR 3038.

## GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA does not relieve a fiduciary or other party in interest from certain other provisions of ERISA, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of ERISA;

(2) In accordance with section 408(a) of ERISA and/or section 4975(c)(2) of the Code, the Department makes the following determinations:

- (a) The exemption is administratively feasible;
- (b) The exemption is in the interests of a Participant's or Spouse's IRA; and
- (c) The exemption is protective of the rights of a Participant's or Spouse's IRA;

(3) The exemption is supplemental to, and not in derogation of, any other provisions of ERISA, including

statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describe all material terms of the transaction which is the subject of the exemption.

Accordingly, the following exemption is granted under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

#### **EXEMPTION**

##### **SECTION I. COVERED TRANSACTIONS INVOLVING IRAs SUBJECT TO TITLE I AND TITLE II OF ERISA**

The restrictions of section 406(a)(1)(A) and (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section

4975(c)(1)(A) and (D) of the Code,<sup>6</sup> shall not apply, effective January 1, 2012, to:

(a) The direct or indirect acquisition by a Participant's IRA of an interest in a Medallion Fund through such IRA's acquisition of an interest in a New Medallion Vehicle;

(b) The acquisition of an additional interest by a Participant's IRA in a New Medallion Vehicle; and

(c) The redemption of all or a portion of a Participant's IRA's interest in a New Medallion Vehicle.

This exemption is subject to the general conditions set forth below in Section III.

SECTION II. COVERED TRANSACTIONS INVOLVING IRAs SUBJECT TO TITLE II OF ERISA ONLY

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) and (D) of the Code, shall not apply, effective January 1, 2012, to:<sup>7</sup>

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<sup>6</sup> For purposes of this exemption, references to the provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

<sup>7</sup> Pursuant to 29 CFR 2510.3-2(d), the Spouses' IRAs are not within the jurisdiction of Title I of the Act.

(a) The direct or indirect acquisition by a Spouse's IRA of an interest in a Medallion Fund through such IRA's acquisition of an interest in a New Medallion Vehicle;

(b) The acquisition of an additional interest by a Spouse's IRA in a New Medallion Vehicle; and

(c) The redemption of all or a portion of a Spouse's IRA's interest in a New Medallion Vehicle.

This exemption is subject to the general conditions set forth below in Section III.

### SECTION III. GENERAL CONDITIONS

(a) An IRA's acquisition of an interest in a New Medallion Vehicle is made at the specific direction of an IRA Holder.

(b) Renaissance renders no investment advice (within the meaning of 29 CFR 2510.3-21(c)) to IRA Holders concerning a potential acquisition of an interest in a New Medallion Vehicle and does not engage in marketing activities or offer employment-related incentives of any kind intended to cause IRA Holders to consider such acquisition.

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However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

(c) An interest in a New Medallion Vehicle is only available to IRA Holders who satisfy the securities law and other regulatory-based investor qualifications applicable to all investors in such New Medallion Vehicle.

(d) No commissions, sales charges, or other fees or profit participations in the form of performance allocations or otherwise, direct or indirect, are assessed against an IRA in connection with its acquisition and holding of an interest in a New Medallion Vehicle.

(e) An IRA pays no more and receives no less for its particular interest in any of the New Medallion Vehicles than they would in an arm's length transaction with an unrelated party.

(f) An IRA's interest in a New Medallion Vehicle is redeemable, in whole or in part, without the payment of any redemption fee or penalty, no less frequently than on a quarterly basis upon no less than 10 days advance written notice, except in the case of New Kaleidoscope, for which 45 days' notice is required.

(g) An acquisition or redemption of an IRA's interest in a New Medallion Vehicle is made for fair market value, determined as follows:

(1) Equity securities are valued at their last reported sale price or official closing price on the market

on which such securities primarily trade using sources independent of Renaissance and the issuer. If no sale of such equity security was reported on that date, the market value will be the last reported sale price on the most recent date for which a price is available, and will reflect a discount if such date occurred more than 30 days before.

(2) Fixed income securities are valued at the "bid" price of such securities at the close of business on the relevant valuation date. These prices are determined (i) where available, on the basis of prices provided by independent pricing services that determine valuations based on market transactions for comparable securities; and (ii) if independent pricing services are not available, on the basis of quotes obtained from multiple independent providers that are either U.S.-registered or foreign broker-dealers, which are registered and subject to the laws of their respective jurisdiction, or banks.

(3) Options are valued at the mean between the current independent "bid" price and the current independent "asked" price or, where such prices are not available, are valued at their fair value in accordance with Fair Value Pricing Practices by the Renaissance Valuation Committee,

which utilizes a set of defined rules and an independent review process.

(4) If current market quotations are not readily available for any investments, such investments are valued at their fair value by the Renaissance Valuation Committee in accordance with Fair Value Pricing Practices.

(h) Redemption of an IRA's interest in a New Medallion Vehicle, in whole or in part, is made in cash.

(i) In the event that a redemption of any portion of an interest in a New Medallion Vehicle held by an IRA becomes necessary as the result of a reduction of the Investment Allocation applicable to a Participant, then, at an IRA Holder's election, a redemption may first be made of such IRA Holder's taxable investments (if any) prior to his or her IRA's interest in a New Medallion Vehicle.

(j) With respect to the investment by Participants in the New Medallion Vehicles through IRAs, Renaissance acknowledges that such investments may constitute investments by a "pension plan" within the meaning of section 3(2) of the Act, and the Applicant represents that, with respect to such investments, it will comply with all applicable requirements of Title I of the Act.



(k) Renaissance does not use the fact of IRAs' investments in the Funds for any marketing activities or publicity materials for the Funds.

(l) In advance of the initial investment by an IRA in a New Medallion Vehicle, the IRA Holder receives:

(1) A copy of the proposed exemption and the final exemption, following the publication of the final exemption in the Federal Register;

(2) A private offering memorandum (with all related exhibits) describing the relevant investment vehicles, including its investment objectives, risks, conflicts, operating expenses and redemption and valuation policies, and any IRA Holder whose IRA owns an interest in a New Medallion Vehicle receives the same disclosures and information provided to other investors with respect to the Fund in which he or she invests; and

(3) Following receipt of the information described in (1) and (2), above, an IRA Holder will receive all reasonably available relevant information as such IRA Holder may request.

(m) On an on-going basis, Renaissance provides each IRA Holder whose IRA owns an interest in a New Medallion Vehicle with the following information:

(1) Unaudited performance reports at the end of each month; and

(2) Audited annual financial statements following the end of each calendar year.

(n) Prior to the acquisition by an IRA of an interest in a New Medallion Vehicle or each Medallion Master Fund, other New Medallion Vehicle, or New RIEF/RIFF in which, or through which, a New Medallion Vehicle invests, Renaissance or the applicable New Medallion Vehicle manager (the New Medallion Vehicle Manager), with respect to any such acquisition by an IRA:

(1) Agrees to submit to the jurisdiction of the federal and state courts located in the State of New York;

(2) Agrees to appoint an agent for service of process for the New Medallion Vehicle, and any other Fund described in this section, in the United States (the Process Agent);

(3) Consents to service of process on the Process Agent; and

(4) Agrees that any enforcement by an IRA Holder of his or her rights pursuant to this exemption will, at the option of the IRA Holder, occur exclusively in the United States courts.

(o) Renaissance maintains or causes to be maintained for a period of six years from the date of any covered transaction such records as are necessary to enable the persons described in paragraph (p)(1) below to determine whether the conditions of this proposed exemption, if granted, have been met, provided that (1) a separate prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Renaissance, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest or disqualified person other than Renaissance shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or are not available for examination as required by paragraph (p)(1) below; and

(p)(1) Except as provided below in paragraph (p)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to above in paragraph (o) are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department, the Internal Revenue

Service, the Commodity Futures Trading Commission (CFTC), or the U.S. Securities and Exchange Commission (SEC), and

(B) Any IRA Holder or any duly authorized representative or beneficiary of an IRA; and

(2) None of the persons described above in paragraph (p)(1)(B) shall be authorized to examine trade secrets of Renaissance, or commercial or financial information which is privileged or confidential, and should Renaissance refuse to disclose information on the basis that such information is exempt from disclosure, Renaissance shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

#### SECTION IV. DEFINITIONS

For purposes of this exemption:

(a) The term "Renaissance" means Renaissance Technologies, LLC, and its affiliates.

(b) An "affiliate" of a person includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such entity (for purposes of this paragraph, the term "control" means the power to exercise a

controlling influence over the management or policies of a person other than an individual); and

(2) Any officer of, director of, or partner in such person.

(c) The term "Fair Value Pricing Policies" means the Official Pricing Policy established in good faith by the Renaissance Valuation Committee for valuing an instrument, which is subject to the approval of the Renaissance Technologies LLC Board of Directors.

(d) The term "Fund" or "Funds" means, individually or collectively, the nine privately offered U.S. and non-U.S. collective investment vehicles managed by Renaissance, comprised almost exclusively of assets of Renaissance and its owners and employees (the Proprietary Funds) and the six privately offered U.S. and non-U.S. collective investment vehicles, consisting primarily of assets of clients of Renaissance (the non-Proprietary Funds).

(e) The term "Investment Allocation" means the permitted investment allocation limit in the Medallion Funds applicable to a Renaissance employee, which such employee and his or her Spouse may utilize to make investments in a Medallion FF or Kaleidoscope, or in an applicable New Medallion Vehicle.

(f) The term "IRA" means an "individual retirement account" as defined under section 408(a) of the Code or a "Roth IRA" as defined under section 408A of the Code that is beneficially owned by an IRA Holder.

(g) The term "IRA Holder" means a Participant, or the Spouse of a Participant, who is eligible to invest in a New Medallion Vehicle through his or her IRA.

(h) The term "Kaleidoscope" means Renaissance Kaleidoscope Fund LLC, a Delaware limited liability company established by Renaissance to facilitate the investment by employees of Renaissance who are not Accredited Investors under the Securities Act of 1933, as amended (the 1933 Act) or otherwise do not meet the financial requirements to invest in the other Proprietary Funds.

(i) The term "Medallion Funds" means six of the nine Proprietary Funds, organized in a "master-feeder" investment structure, comprised of six Medallion Fund feeder funds (Medallion FFs) engaging in their investment and trading activities only through certain master funds and their subsidiaries (the Medallion Master Funds).

(j) The term "New Medallion Vehicle" or "New Medallion Vehicles" means, individually or collectively, New Medallion FF, New Medallion FF RMPRF, and New Kaleidoscope.

(k) The term "New Kaleidoscope" means Renaissance Kaleidoscope RF Fund LLC, the Delaware limited liability company established by Renaissance in order to facilitate an investment by IRA Holders who are not "Accredited Investors" under the 1933 Act in New Medallion FF RMPRF and New RIEF/RIFF, through their IRAs.

(l) The term "New Medallion FF" means Medallion Fund RF LP, the Bermuda Limited Partnership that is treated as a corporation for US Federal Income Tax purposes, established by Renaissance in order to facilitate an investment by an IRA Holder who is a "Qualified Purchaser" or "Knowledgeable Employee" under the Investment Company Act of 1940, as amended (the 1940 Act) in the Medallion Master Funds, through his or her IRA.

(m) The term "New Medallion FF RMPRF" means Medallion RMPRF Fund LP, the Bermuda Limited Partnership that is treated as a corporation for US Federal Income Tax purposes established by Renaissance in order to facilitate the investment by IRA Holders who are neither Qualified Purchasers nor "Knowledgeable Employees" as defined in the 1940 Act, but who are Accredited Investors, in the Medallion Master Funds, through their IRAs.

(n) The term "New RIEF/RIFF" means a newly organized series of RIEF RMP LLC and a newly created Bermuda limited

partnership to be known as RIFF RF FUND LP, each of which has been established to facilitate investments of IRAs in RIEF RMP LLC and RIFF RMP LLC.

(o) The term "Participant" means a person who is either an employee or a Permitted Owner of Renaissance at the time of such individual's investment in the New Medallion Vehicles.

(p) The term "Permitted Owners" means the eight individuals permitted to invest in the Medallion Funds following the termination of their Renaissance employment, comprised of three Renaissance "founders," and five former employees who are current owners of Renaissance.

(q) The term "Renaissance Valuation Committee," or "RVC," means the committee, established by Renaissance in 2008, that oversees and monitors the valuation process, and establishes the methods of, and procedures for, valuing various instruments traded by Renaissance, composed of high-level Renaissance employees who also may be Fund investors.

(r) The term "Spouse" means a person who is (1) married to a Participant, or (2) to the extent not prohibited by applicable law, in a civil union or similar marriage-equivalent institution established pursuant to State law of the State where the Participant resides (or



otherwise recognized by the State where the Participant resides) with a Participant.

SECTION IV. EFFECTIVE DATE

This exemption is effective as of January 1, 2012.

Signed at Washington, DC, this 13th day of April, 2012.

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Lyssa Hall  
Acting Director of Exemption  
Determinations  
Employee Benefits Security  
Administration  
U.S. Department of Labor

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